

CONSENT DECREE

I. Introduction

1. This Consent Decree is entered into by the Media Bureau of the Federal Communications Commission, the Wireless Telecommunications Bureau of the Federal Communications Commission, and Matinee Radio, LLC, applicant for a construction permit for a commercial FM broadcast station on Channel 228C1 at Marfa, Texas.

II. Definitions

2. For the purposes of this Consent Decree, the following definitions shall apply:
- a) “Matinee” refers to Matinee Radio, LLC, its subsidiaries, affiliates, and any successors or assigns;
 - b) “Media Bureau” means the Media Bureau of the Federal Communications Commission;
 - c) “Wireless Telecommunications Bureau” means the Wireless Telecommunications Bureau of the Federal Communications Commission;
 - d) “Bureaus” means the Media Bureau and the Wireless Telecommunications Bureau;
 - e) “Parties” means the Media Bureau, Wireless Telecommunications Bureau, and Matinee Radio, LLC;
 - f) “Investigation” means the matters raised by the Media Bureau in its May 23, 2006, and December 15, 2006, letters to Matinee Radio, LLC, and Matinee’s responses thereto; and the matters that were the subject of the July 17, 2006, notification Matinee Radio, LLC filed with the Secretary of the Commission pursuant to Sections 1.2105(c)(6) and 73.5002(d) of the Commission’s rules.
 - g) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. Section 151 *et seq.*;
 - h) “Rules” means the Commission’s regulations set forth in Title 47 of the Code of Federal Regulations;
 - i) “Adopting Order” means an order of the Media Bureau and Wireless Telecommunications Bureau adopting this Consent Decree;
 - j) “Effective Date” means the date on which the Media Bureau and Wireless Telecommunications Bureau release the Adopting Order;
 - k) “MPRC” means Marfa Public Radio Corporation, a Texas not-for-profit corporation;

III. Background

3. Matinee was the high bidder in FM Auction No. 37 for, *inter alia*, a vacant FM allotment on Channel 228C1 in Marfa, Texas.¹ On January 3, 2005, Matinee filed its “long-form” application (“the Application”) for a construction permit for a new FM radio broadcast station at Marfa.² On May 23, 2006, the Media Bureau sent Matinee a letter raising questions about its application.³ On July 17, 2006, Matinee responded to the inquiry letter. On that same date, Matinee amended its application to disclose a Time Brokerage Agreement (“TBA”) and other agreements it had entered into with MPRC dated between October 1, 2005, and June 30, 2006.⁴ Also on July 17, 2006, Matinee filed a notification with the Secretary of the Commission pursuant to Sections 1.2105(c)(6) and 73.5002(d) of the Commission’s rules. Matinee’s notification disclosed its communications with another applicant in Auction No. 37. The Media Bureau sent an additional inquiry letter on December 15, 2006,⁵ to which Matinee responded on January 16, 2007.

IV. Agreement

4. The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureaus by incorporation of such provisions by reference in an Adopting Order.

5. The Parties agree that this Consent Decree shall become binding on the parties on the Effective Date. Upon the Effective Date, the Adopting Order, and this Consent Decree shall have the same force and effect as any other orders of the Commission. Any violation of the terms of this Consent Decree shall constitute a violation of a Commission order.

6. Matinee agrees that the Bureaus have jurisdiction over the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

7. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between them concerning the matters that are subject to this Consent Decree.

8. The Parties agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance

¹ See *FM Broadcast Construction Permit Auction Closes*, Public Notice, 20 FCC Rcd 1021 (MB/WTB rel. Dec. 1, 2004), Attachment A, p. 11. Matinee’s high bid for the Marfa frequency was \$287,000.

² File No. BNPH-20050103AAU.

³ *Letter from Peter H. Doyle, Chief, Audio Division, Media Bureau, Federal Communications Commission to Matinee Radio, LLC* (May 23, 2006).

⁴ These agreements include a “Construction Agreement” dated October 1, 2005, pursuant to which MPRC will construct the station according to the terms of the as-yet-unissued construction permit “subject to the overall supervision and control” of Matinee; MPRC will bear all costs of construction. Additionally, Section 20 of the TBA grants MPRC an option to acquire the as-yet-unissued construction permit for \$287,000.

⁵ *Letter from Peter H. Doyle, Chief, Audio Division, Media Bureau, Federal Communications Commission to Matinee Radio, LLC* (Dec. 15, 2006).

or noncompliance with the requirements of the Communications Act or the Commission's rules. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, Matinee does not admit or deny any liability for violating the Act or Commission rules in connection with the matters that are the subject of this Consent Decree.

9. In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of scarce public resources, the Media Bureau agrees to terminate its Investigation as to Matinee.

10. In consideration for termination by the Media Bureau of the Investigation as to Matinee, and in accordance with the terms of this Consent Decree, Matinee agrees to the terms set forth herein.

11. Matinee will make a voluntary contribution to the United States Treasury in the amount of Thirty Five Thousand Dollars (\$35,000) within 30 days from the Effective Date. The payment shall be made, without further protest or recourse, by credit card through the Commission's Financial Operations Center at 202-418-1995, or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 358340, Pittsburgh, Pennsylvania 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, Pennsylvania 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. The payment must reference Acct. No. MB-200741410353 and FRN 0011326436.

12. The Media Bureau agrees to grant promptly the pending Application (File No. BNPH-20050103AAU after the Effective Date, provided that the following conditions have been met: 1) Matinee has fully and timely satisfied its obligation to make the voluntary contribution referenced in paragraph 11 of this Decree; 2) Matinee makes full and timely payment of the balance of its winning bid for the construction permit for Channel 228C1 at Marfa, Texas; and 3) there are no other issues that would preclude the grant of the Application.

13. Control. Matinee certifies and agrees to the following: (1) it is in control of the application for a construction permit for a broadcast station on Channel 228C1 at Marfa, Texas, and it will remain in control of the application and of the station upon grant of any construction permit and license until such time, if any, as it may consummate, after Commission approval, a transfer of control or assignment of license of the station to another entity; and (2) such control, as referred to in this paragraph, shall include in particular control over programming, personnel and finances.

14. Construction. Matinee certifies and agrees to the following: (1) it will not engage in any construction of a broadcast station on Channel 228C1 at Marfa, Texas, until such time, if any, that the Commission grants it a construction permit; and (2) any post-grant construction will be under its control and consistent with such construction permit or subsequent (or modified) construction permit issued by the Commission.

15. Operation. Matinee further certifies and agrees to the following: (1) it will not engage in any operation of a broadcast station on Channel 228C1 at Marfa, Texas, until such time, if any, as it is authorized to do so by the Commission (e.g., through program test authority upon the filing of an application for a license to cover its construction permit); and (2) any operation will be consistent with the authorization(s) issued by the Commission.

16. The Parties agree that Matinee's obligations set forth in paragraphs 13 through 15 will remain in effect from the Effective Date until a date thirty six (36) months from issuance of a construction permit to Matinee pursuant to the Application or until the authorized facility has been constructed and a license application filed, whichever occurs sooner. After that date, Matinee will continue to be subject to the underlying provisions of the Communications Act and the Commission's Rules.

17. The Bureaus agree that they will not use the facts developed in this Investigation, the existence of this Consent Decree, or the facts underlying Matinee's July 17, 2006, amendment, to institute, on their own motion, any new proceeding, formal or informal, or to take any action on their own motion, or recommend to the full Commission or the Enforcement Bureau any forfeiture or other sanction, against Matinee for any alleged violation of the matters at issue in the Investigation that occurred prior to the Effective Date of this Consent Decree. The parties agree that nothing in this Consent Decree shall prevent the Bureaus from recommending to the Commission or the Enforcement Bureau new investigations or enforcement proceedings against Matinee, or any entity in which it or its principals hold an interest, in the event of any alleged future misconduct for violation of this Consent Decree or for violation of the Act or the Commission's Rules as consistent with the provisions of this Consent Decree.

18. Matinee agrees that any violation by it of this Consent Decree, including but not limited to its failure to make any of the payments required by Paragraph 11 hereof, will constitute a separate violation of a Commission order and subject Matinee to appropriate administrative sanctions.

19. The Parties waive any and all rights they may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Adopting Order adopts the Consent Decree without change, addition or modification.

20. Matinee waives any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. Section 504 and 47 C.F.R. Section 1.1501 *et seq.*, relating to the matters discussed in this Consent Decree.

21. The Parties agree that the effectiveness of this Consent Decree is expressly contingent upon issuance of the Adopting Order, provided the Adopting Order adopts the Consent Decree without change, addition or modification.

22. The Parties agree that if any Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order neither Matinee nor the Commission will contest the validity of the Consent Decree or the Adopting Order. The Parties agree to comply with, defend and support the validity of this Consent Decree and the Adopting Order in any proceeding seeking to nullify, void, or otherwise modify the Consent Decree or the Adopting Order.

23. The Parties agree that, in the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, it will become null and void and may not be used in any manner in any legal proceeding.

24. The Parties agree that any provision of this Consent Decree that conflicts with any subsequent rule, order of general applicability or other decision of general applicability

adopted by the Commission will be superseded by said Commission rule, order or other decision.

25. This Consent Decree may be signed in counterparts.

For the Media Bureau:

Monica Shah Desai
Chief, Media Bureau

Date

For the Wireless Telecommunications Bureau:

Fred Campbell
Chief, Wireless Telecommunications Bureau

Date

For Matinee Radio, LLC:

Robert Walker
President

Date